

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054**

In the Matter of:)	
)	
STATE OF INDIANA)	WT Docket No. 02-55
)	
and)	TAM-12005
)	
SPRINT CORPORATION)	
)	
)	
)	

JOINT REQUEST

The State of Indiana (“Indiana”) and Sprint Corporation (“Sprint”), by and through their respective counsel, hereby submit this Joint Request for the Chief Administrative Law Judge Richard L. Sippel (the “ALJ”) to approve the attached Settlement Agreement entered into by Indiana and Sprint. This Settlement Agreement resolves fully all factual issues and disputed matters designated for hearing by the Public Safety and Homeland Security Bureau in paragraph 24 issues (a) through (m) in the Hearing Designation Order (“HDO”) released on October 17, 2017 in the above captioned proceeding. It is also consistent with the Commission’s 800 MHz program rules and policies in that it will eliminate the uncertainty of protracted litigation and the associated costs, and it furthers the goal of completing 800 MHz rebanding.

These disputes represent a number of unresolved matters relating to the implementation of the State of Indiana’s 800 MHz rebanding project undertaken within the scope of the Commission’s rebanding rules and under the terms of Indiana’s 800 MHz rebanding contract with Sprint. While Indiana had completed the physical rebanding of its radios and system, Indiana had not reconciled radios to be returned to Motorola, and other matters. These issues

were mediated during 2016 before an 800 MHz Transition Administrator Mediator. While some issues were clarified or narrowed during that process, the Bureau directed that the open matters be briefed to the Bureau.¹ The Bureau issued its determinations in an Order dated May 22, 2017.²

The State of Indiana filed a request for *de novo* review of the Bureau's Order, which resulted in the issuance of the HDO.³ The parties had been exploring options for a global settlement of these disputed issues rather than incurring the additional costs and devotion of additional resources necessary to prosecute a hearing; however, as the parties have presented to the ALJ previously, Indiana had to await review and get approval from the Governor's Office of the offer it made to Sprint. This offer was made to Sprint on November 9 and was accepted by Sprint on November 13, 2017. As a result, the parties have twice sought extensions of the date to file Notices of Appearance so that the Settlement Agreement could be drafted, signed and submitted along with these Notices. The last ALJ order provided that the parties file Notices of Appearance no later than December 22, 2017.

The parties have executed the comprehensive Settlement Agreement that is attached to this Motion.⁴ In addition, they shared a draft version of the Settlement Agreement with the relevant staff in the Enforcement Bureau and the Bureau and the Bureau has expressed no concern about the substance of the Settlement Agreement or any other matter. By filing with the ALJ the Settlement Agreement that fully addresses all disputed issues in the HDO, and by filing

¹ Order Designating Issues, 32 FCC Rcd 4073 (2017) (Appendix A).

² Memorandum, Opinion and Order, 32 FCC Rcd 4058 (2017).

³ Hearing Designation Order, (PSHSB, DA-17-1019, October 17, 2017).

⁴ Given that the Settlement Amount is different from the disputed liability contained in the May 22, 2017 Order from the Public Safety and Homeland Security Bureau, *supra* fn 2, the parties are publicly filing a copy of the Settlement Agreement with only that information redacted. There is precedent under the 800 MHz program for withholding similar information from the public files and Sprint will request confidential treatment under Section 0.459 of the Commission's rules. Both the Enforcement Bureau and the ALJ will be served with an unredacted copy of the Settlement Agreement under seal.

this Motion and concurrent individual party Notices of Appearance, the parties seek to have the ALJ review these matters and approve the Settlement Agreement and dismiss the Hearing Designation Order with prejudice. The Settlement Agreement includes mutual releases by the parties and it eliminates any need for a Commission hearing on the Public Safety and Homeland Security Bureau's May 22, 2017 Order in this matter.

Both Indiana and Sprint request that the ALJ promptly approve the Settlement Agreement as being consistent with the goals of speeding 800 MHz rebanding. Indiana and Sprint are serving the Commission's Enforcement Bureau staff with this Motion and Settlement Agreement and expect based on communication with the Bureau's staff that the Bureau will promptly file its comments on the Settlement Agreement as the ALJ specified in his previous Order on this matter.

Respectfully submitted,

State of Indiana

By: 

Heather Crockett
Susan Gard
Deputies Attorney General
State of Indiana

Sprint Corporation

By: 

Laura H. Phillips
Lee G. Petro

Counsel for Sprint Corporation

December 11, 2017

SETTLEMENT AGREEMENT

On this 8th day of December, 2017, the State of Indiana acting by and through the Integrated Public Safety Commission (hereinafter the "State"), and Sprint Corporation (hereinafter "Sprint") (the State and Sprint are sometimes referred to as a "Party" or, collectively, the "Parties"), enter into this Settlement Agreement regarding the 800 MHz rebanding dispute between the State and Sprint (the "Dispute") and in relation to that proceeding before an Administrative Law Judge of the Federal Communications Commission, having a WT Docket No. of 02-55 and a TAM of 12005 (the "Proceeding").

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to the following:

A. Hearing Designation Order.

The Parties agree that this Settlement Agreement resolves all issues listed in the Hearing Designation Order¹, detailed in Paragraph 24 (a)-(m). Additionally, the Parties agree that there are no other outstanding issues, and that this Settlement Agreement constitutes the entire understanding between the Parties.

B. ALJ Consent.

This Settlement Agreement is entered into subject to approval by an FCC Administrative Law Judge ("ALJ")², and shall be void unless the ALJ approves it. The Parties shall in good faith pursue approval of the Settlement Agreement by the ALJ and shall cooperate fully with each other and take whatever additional action is necessary or appropriate to obtain ALJ approval of, and to effectuate, the understandings contemplated by this Settlement Agreement. Should the ALJ refuse to approve this Settlement Agreement, then the Parties hereby agree that they will immediately make good faith efforts to resolve each ALJ objection in order to obtain ALJ approval.

¹ In the Matter of State of Indiana and Sprint Corporation, WT Docket No. 02-55, Hearing Designation Order, October 17, 2017.

² Since the State of Indiana filed for a hearing, an ALJ will review this Settlement Agreement, and, if approved, shall subsequently dismiss the Hearing Designation Order, as detailed in the Proceeding. The FCC issued the Hearing Designation Order, setting November 5, 2017, as the date for the Parties to enter an appearance and for Sprint to pay the hearing fee. The ALJ subsequently issued an order convening a pre-hearing conference on November 6, 2017. In response, on October 25, 2017, the Parties filed a joint request to delay the proceedings until November 27, 2017, in order to allow a sufficient time for a settlement. The ALJ subsequently issued an order directing the parties to file their notice of appearance on November 27, 2017, and to participate in a pre-hearing conference on December 4, 2017. The ALJ issued an additional order at the request of the Parties, giving them until December 22, 2017 to sign, submit, and file a settlement agreement and a joint motion to dismiss. Five days after the submission of the settlement agreement, the Enforcement Bureau must either concur with the settlement agreement, or provide reasons as to why it objects.

C. Settlement Amount.

- (1). The State will pay Sprint _____ ("Settlement Amount") prior to December 31, 2017.
- (2). The State will remit to Sprint One Hundred percent (100%) of the proceeds, if any, from the sale of the Motorola radios in the State's possession, within thirty (30) days of receipt of those funds. The State will use good faith efforts to sell the radios; however, Sprint understands besides being obsolete, these radios have been flashed for rebanding and have limited commercial appeal.
- (3). If the State is able to recoup any funds from its contractor EMR Consulting, Inc. ("EMR"), its successors or assigns, the State will split the funds received 50% / 50% with Sprint. The State will have sole control of any such litigation and will assume all expenses related to the effort to recoup any funds. Any settlement or compromise shall be at the State's sole discretion. Sprint understands that it is not a party to any action in the State's attempt to recoup funds from EMR. The State does agree to advise Sprint promptly of major milestones in any processes that are matters of public record and the ultimate disposition of the matter, regardless of the outcome.

D. Cooperation. The Parties will cooperate to ensure the prompt execution of all closing documents with regard to the Frequency Reconfiguration Agreement executed between the Parties on June 12, 2009, and amended May 9, 2011, July 12, 2011, October 24, 2011, December 13, 2011, August 29, 2012, October 2, 2014, and May 11, 2016, and certifications as required by Sprint, the Transition Administrator, and the FCC.

E. Mutual Release. Concurrent with the execution of this Settlement Agreement, the Parties will enter into a Mutual Release, attached hereto as Attachment A, whereby the State and Sprint each agree to release and forever discharge the other Party, as well as the other Party's respective attorneys, officers, agents, directors, employees, owners, shareholders, successors, and assigns from any and all claims, liabilities, causes of action, demands, rights, damages, costs and expenses whatsoever, which the State or Sprint may now have against the other Party or which may hereafter accrue on account of or in any way relating to the Dispute or the Proceeding, once all conditions as outlined in this Settlement Agreement have been met.

F. Non-Released Claims. This Parties expressly carve-out from this Settlement Agreement and the Release contained herein, and the State retains, all rights, claims, demands, and causes of action it has against EMR Consulting, Inc., its successors, principals or assigns.

G. Miscellaneous.

- (1). The Parties agree that this Settlement Agreement is, and shall remain, confidential between the Parties unless otherwise required by law, or judicial or administrative proceeding. In the event that this Settlement Agreement is to become public, the Parties agree to redact the Settlement Amount from the Settlement Agreement, prior to the Settlement Agreement becoming public.


(2). The Parties agree the settlement, as outlined in this Settlement Agreement, is consistent with the FCC's Minimum Cost and No Goldplating Rules, as outlined in its 2007 Minimum Cost Order.³ This Settlement Agreement will eliminate the uncertainty of protracted litigation and the considerable costs associated therewith, and is consistent with the ultimate goal of timely and efficient rebanding.

(3). This Settlement Agreement may be executed in multiple counterparts, any of which may be executed by fewer than all of the Parties, each of which shall be deemed an original, and all of which together shall constitute one original Settlement Agreement that is binding on the Parties. A facsimile copy of a duly executed counterpart shall be treated as an original counterpart.


IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below:

STATE OF INDIANA

Integrated Public Safety Commission


By: 
David W. Vice
Executive Director
Date: 12-6-17

SPRINT CORPORATION

By: 
Patty Tikkala
Vice President, Spectrum
Date: 12/8/17

Approved by:

Office of the Indiana Attorney General

By: 
Name: Heather M. Chubb
Title: Deputy Attorney General
Date: 12/8/17

³ In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, Memorandum Opinion and Order, May 18, 2007.

ATTACHMENT A

MUTUAL RELEASE

On this 8th day of December, 2017, the State of Indiana acting by and through the Integrated Public Safety Commission (hereinafter "State"), and Sprint Corporation (hereinafter "Sprint") (the State and Sprint are sometimes referred to as a "Party" or, collectively, the "Parties"), enter into this Mutual Release regarding the 800 MHz rebanding dispute between the State and Sprint (the "Dispute") and in relation to that proceeding before an Administrative Law Judge of the Federal Communications Commission, having a WT Docket No. of 02-55 and a TAM of 12005 (the "Proceeding").

In consideration of the settlement of the Dispute and the Proceeding, the entry into that certain Settlement Agreement of even date by and between the State and Sprint (the "Settlement Agreement"), and the satisfaction of all conditions as outlined in the Settlement Agreement, the State and Sprint agree as follows:

A. Release from Claims. Upon fulfillment of all terms and conditions set forth in the Settlement Agreement, the State and Sprint each agree and hereby release and forever discharge the other Party, as well as the other Party's respective attorneys, officers, agents, directors, employees, owners, shareholders, successors, and assigns from any and all claims, liabilities, causes of action, demands, rights, damages, costs and expenses whatsoever, which the State or Sprint may now have against the other Party or which may hereafter accrue on account of or in any way relating to the Dispute or the Proceeding.

B. Non-Released Claims. This Parties expressly carve-out from this Mutual Release, and the State retains, all rights, claims, demands, and causes of action it has against EMR Consulting, Inc., its successors, principals or assigns.

C. Dismissal of Proceedings. Further, upon the fulfillment of the terms and conditions set forth in the Settlement Agreement, the State and Sprint will file a Motion to Dismiss the Proceeding.

D. Admission. The Settlement Agreement, together with this Mutual Release, constitutes the result of the settlement of disputed claims, and does not constitute any admission of liability by the State or Sprint, or the admission by the State or Sprint as to any issue of law or fact pertaining to the Dispute or the Proceeding.

E. Further Modification. This Mutual Release shall not be reopened or modified to any extent, except by written agreement of both Parties.

F. Additional Documents. The Parties agree to execute any additional documents that may need to be executed now or in the future to effectuate the terms, promises and covenants of this Mutual Release and the Settlement Agreement.

G. No Inducement. The State and Sprint each declare and represent that no promise, inducement, or agreement not expressed in the Settlement Agreement or this Mutual Release has been made to the other Party hereto.

H. Counterparts. This Mutual Release may be executed in multiple counterparts, any of which may be executed by fewer than all of the Parties, each of which shall be deemed an original, and all of which together shall constitute one original Mutual Release that is binding on the Parties. A facsimile copy of a duly executed counterpart shall be treated as an original counterpart.

IN WITNESS WHEREOF, the Parties have executed this Mutual Release on the dates set forth below:

STATE OF INDIANA
Integrated Public Safety Commission

By: [Signature]

David W. Vice

Executive Director

12-10-17
Date

SPRINT CORPORATION

By: [Signature]

Patty Tikkala

Vice President, Spectrum

12/8/17
Date

Approved by:

Office of the Indiana Attorney General

By: [Signature]

Heather M. Cuckitt
(Print Name)

Section Chief
(Title)

December 8, 2017
Date

Certificate of Service

I hereby certify that on this 11th day of December, 2017, a true and authorized copy of this Joint Request was served by electronic mail upon the following:

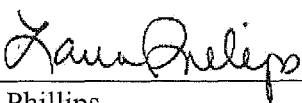
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